

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DALE M. KNAPP,

Plaintiff,

vs.

Case No. _____

LIVINGSTON HEARING AID CENTER, INC.,
a New Mexico Corporation, and KEITH CONDUCT,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Keith Conduct hereby removes the above-entitled cause of action to this Court. In support thereof, Defendant would show the Court the following:

I.

Plaintiff Dale M. Knapp filed a civil action against Defendant in the First Judicial District Court of Santa Fe County, New Mexico on September 17, 2015. Defendant was served with a summons on September 25, 2015. Plaintiff's complaint alleges personal injuries, medical expenses, pain and suffering, emotional distress, loss of enjoyment of life and punitive damages arising from Defendant's alleged perforation of Plaintiff's right ear drum. The case was assigned Cause No. D-101-CV-2015-02067.

II.

Plaintiff is a citizen of Santa Fe County, in the State of New Mexico.

Defendant Keith Conduct is a citizen of the State of Texas. He currently resides in Sherman, Texas, and intends to remain in Sherman, Texas as his permanent home. Upon

information and belief, as of the time of this filing Defendant Livingston Hearing Aid Center had not been served with summons. Defendant Livingston Hearing Aid Center is not a registered corporation in the State of New Mexico. Upon information and belief, Defendant Livingston Hearing Aid Center is a foreign corporation domiciled in the State of Texas. Accordingly, there is complete diversity of citizenship between Plaintiff and Defendants.

III.

In the Complaint, Plaintiff seeks damages for alleged medical negligence leading to the perforation of his right ear drum, medical expenses, pain and suffering, emotional distress, loss of enjoyment of life and punitive damages, which if granted would exceed \$75,000. This Court has original subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because complete diversity of citizenship exists and the amount in controversy exceeds \$75,000, excluding interest and costs. Diversity jurisdiction existed both at the time the state court action was filed and at the time of this removal. This case may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

IV.

As of the date of this filing, Defendant Livingston Hearing Aid Center has not been served with summons, and upon information and belief Defendant Livingston Hearing Aid Center has not waived service. Therefore, Defendant Conduct has complied with 28 U.S.C. § 1446(b)(2)(A).

V.

Plaintiff's Complaint was filed on September 17, 2015 and Mr. Conduct's office was personally served with his summons on September 25, 2015. Mr. Conduct himself received the summons on September 28, 2015. This Notice of Removal was filed within 30 days of receipt of

a copy of Plaintiff's Complaint on September 25, 2015, and less than one year after the state court action was commenced. Thus, this Notice of Removal is timely and all conditions and procedures for removal have been satisfied. *See* 28 U.S.C. § 1446(b). A filing fee of \$400.00 is tendered herewith.

VI.

Mr. Condict attaches the following documents to this Notice of Removal:

- a. True and correct copy of Plaintiff's Complaint for Personal Injuries and Punitive Damages; and a
- b. True and correct copy of all executed summons for Mr. Condict.

Pursuant to D.N.M.LR-Civ 81.1(a), Mr. Condict will transmit to the Court copies of the records and proceedings from the state court action within 28 days of the filing of this Notice of Removal.

VII.

Contemporaneously with filing this Notice of Removal, Mr. Condict is filing a Notice of Filing of Notice of Removal with the clerk of the First Judicial District Court of Santa Fe County, New Mexico, and has given prompt notice of filing of this Notice of Removal to all adverse parties, pursuant to 28 U.S.C. § 1446(d).

VIII.

Accordingly, Defendant Keith Condict removes this action and requests that this Court place this case on the docket of the United States District Court for the District of New Mexico.

Respectfully submitted,

HINKLE SHANOR LLP

Electronically filed

By /s/ Michelle Lalley Blake, Attorney at Law

Kathleen M. Wilson

Michelle Lalley Blake

7601 Jefferson St. NE

Suite 180

Albuquerque, NM 87109

Telephone: (505) 858-8320

Email: kwilson@hinklelawfirm.com

mblake@hinklelawfirm.com

Attorney for Defendant Keith Condict

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of October 2015, I filed the foregoing through the CM/ECF System which caused the parties or counsel of record to be served by electronic means, and a true and correct copy of same to be emailed to the following:

Aimee S. Bevan, Esq.

O’Friel and Levy, P.C.

P.O. Box 2084

Santa Fe, NM 87504-2084

Telephone: (505) 982-5929

Email: aimee@ofrielandlevy.com

Attorneys for Plaintiff Dale M. Knapp

Electronically filed

/s/ Michelle Lalley Blake, Attorney at Law

Michelle Lalley Blake